



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.344 of 2017 (PD)

and

C.M.P (MD) No.1698 of 2017

1.Dharmarajan
2.Kalaimani
3.Kuppuswami

....Petitioners/Petitioners/
2 to 4 defendants

Vs.

1.Azhagu
2.Rajithabegam
3.Kamalam

...Respondents/Respondents/Plaintiff/
1st defendant

4.M.A.Shanthi

....4th respondent/Respondent/
Proposed defendant

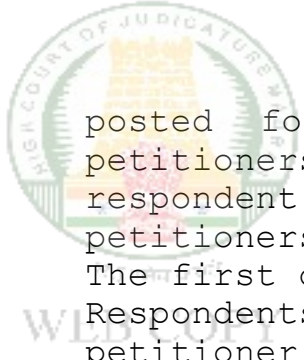
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the fair and executable order in I.A.No.102/2016 in O.S.No.106 of 2012 on the file of the Subordinate Judge, Devakottai, dated 01.12.2016.

For Petitioners : Mr.R.Thirugnanasambantham

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Fair and Executable order made in I.A.No.102/2016 in O.S.No.106 of 2012 passed by the Subordinate Judge, Devakottai, dated 01.12.2016.

2.The petitioners are the defendants 2 to 4, the respondents 1 and 2 are the plaintiffs, third respondent is the first defendant and the fourth respondent is the proposed party in the suit. The respondents 1 & 2 filed suit in O.S.No.106 of 2012 before the Sub Court, Devakottai for declaration of title, recovery of possession and to declare the sale deed executed in favour of the first respondent as null and void and also to declare the settlement deed executed by the second defendant as null and void and not binding on the plaintiffs and for mandatory injunction and other relief. The petitioner filed written statement and contesting the suit. Trial Commenced. Suit was



posted for cross-examination of P.W.1. At that stage, the petitioners filed I.A.No.102 of 2014 to implead the fourth respondent as 5th defendant in the suit. According to the petitioners, proposed party is the power agent of first defendant. The first defendant even before filing of the suit died. Respondents 1 & 2 filed suit against the dead person. The first petitioner purchased the property from the first defendant through fourth respondent, who is power agent of first defendant. In view of the relief sought for by the respondents 1 & 2, the fourth respondent is necessary party.

3.The respondents 1 & 2 filed counter and opposed the said application stating that the fourth respondent is not necessary and proper party to the suit. The petitioner came out with the application only to drag on the proceedings when the suit is posted for cross-examination of P.W.1.

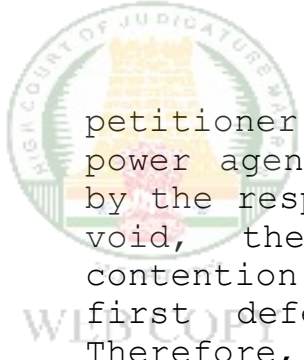
4.The learned Judge considering the averments made in the affidavit and counter affidavit and materials available on record, dismissed the application holding that the fourth respondent is not necessary and proper party to the suit. The petitioners have not proved that first defendant is dead.

5.Against the said order of dismissal made in I.A.No.102 of 2014, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioners reiterated the averments made in the affidavit and grounds of revision. The learned counsel for the petitioners referred to Order 1 Rule 3 and 10(2) of Civil Procedure Code and contended that Court has power to implead any party to the suit at any stage of the suit. The first defendant was residing at Kolalambur appointing fourth respondent as her power agent. The first petitioner purchased the property through fourth respondent from the power agent of first defendant. The respondents 1 & 2 are seeking decree in respect of the said property to declare the sale deed as null and void and therefore, the fourth respondent is proper and necessary party to the suit.

7.I have heard the learned counsel appearing for the petitioners and also perused all the materials available on record.

8.As per Order 1 Rule 3 of Civil Procedure Code all persons may be joined as defendants when any right in respect of same transaction arises or exist against such persons. As per Order 1 Rule 10(2) of Civil Procedure Code, the Court has power to add or delete any person, whose presence is necessary to decide the issue in the suit effectively. According to the petitioners, the fourth respondent is the power agent of first defendant and first



petitioner purchased the property from first defendant through her power agent fourth respondent. In view of declaration sought for by the respondents 1 & 2 to declare the said sale deed as null and void, the fourth respondent is necessary party. The said contention is untenable. The fourth respondent is power agent of first defendant. The first defendant is already on record. Therefore, the fourth respondent is neither necessary nor proper party to the suit as rightly held by the learned Judge, the fourth respondent may be examined as witness to substantiate their case. A person, who may be a necessary witness need not be a necessary party to the suit. Further, the petitioners have filed application for impleading fourth respondent after commencement of trial. The petitioners contended that the first defendant is died even before filing of the suit and fourth respondent is necessary party. The petitioners have not filed any document to substantiate their claim that first defendant died even before filing of the suit. The learned Judge as per Court records has held that first defendant remained ex-parte. Therefore, this contention of the petitioner has no force. In view of the same, the contentions of the respondents 1 & 2 that only to drag on the proceedings, the petitioners have come out with the present petition to implead the fourth respondent, has considerable force. In the circumstances, the learned Judge has rightly exercised his jurisdiction conferred on him and there is no illegality or irregularity warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(writs)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Devakottai

AM
KK-SV-MMS-03.03.2017-3P-2C

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